IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.379 OF 1995

The State of Maharashtra .. Appellant

Vs.

Rajmahendrasingh D. Pardeshi
Age 32 years, Bakal No.614
S.R.P. Group No.6, Dhule,
Taluka and District Dhule. .. Respondent
(Org. Accused)

Mr. D.R. More, APP for Appellant-State.
Ms. Varsha Palav for Respondent-accused.

CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.

Date : April 19, 2005.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed challenging the order of acquittal of the respondent-accused for offences under Sections 307 and 286 of IPC and for offence under Section 66(1)(b) of the Bombay Prohibition Act 1949 passed on 30/11/1994 by Assistant Sessions Judge, Nashik in Sessions Case No.184 of 1993.

2. The respondent who was a constable in State Reserve Police was prosecuted for the aforesaid offences in respect of an incident dated 13th July

1993 when he had allegedly shot from his rifle aiming at other police officers while he was on security duty in the campus of Central Jail, Nashik Road. The accused was on that day on rotation duty between 12 noon to 2 p.m. when he fired one round at P.W. 10 Constable Shaikh and another at P.C. Palde P.W. 9 and third at the police mobile van. But fortunately none of the shots fired from his rifle hurt any police officer. At that time he had consumed liquor while on duty. There were two platoons consisting of three Assistant Police Sub-Inspectors, eight Police Head Constables and forty Police Constables who were working under the complainant PSI Pawar, who was Company Commander of the State Reserve Police. For the purpose of patrolling duty, different groups consisting of constables with an In-charge Head Constable were formed. The accused was in Guard No.1 along with two other constables M.N. Pawar and R.S. Ahire under Head Constable Jagtap. By rotation the constables from each Guard used to do duty for two hours. On the date of the incident between 12 noon and 2 p.m. the accused was on duty. At about 12.45 p.m. the accused called P.W. 10 Shaikh near him when he was passing from some distance from the accused for going to post No.7. Accused aimed rifle at him and, therefore, P.W. 10 stopped. Accused fired from his

rifle but he was not hurt. Hearing shouts, the complainant and others rushed to see what happened. When the other police officers called out accused and asked him to drop his rifle from his hands, accused aimed at mobile van and shot one round from his rifle but none was hurt. The accused ultimately put down his rifle on the ground. Thereupon police constables rushed towards him from his back side and apprehended him. They found three empty cartridges lying on the ground and two live cartridges were with the accused. He was smelling of alcohol. He was, therefore, taken to Nashik Road Police Station and the FIR was lodged against him and crime was registered against the accused. The rifle, used cartridges and live cartridges were seized under panchanama and the accused was arrested. The accused was sent for medical examination to Civil Hospital, Nashik where his blood sample was also collected for analysis. Spot panchanama was prepared. The rifle and cartridges recovered from the accused were sent to the Ballistic Expert for his opinion. The blood sample of the accused was sent to C.A. The statements of the witnesses were recorded and sanction was obtained to prosecute the accused. Thereafter the charge-sheet was filed for the aforesaid offences.

3. The case was committed to the Sessions Court, where the charges were framed against the accused for the offences under Sections 307 and 286 of IPC and for the offence under Section 66(1)(b) of the Bombay Prohibition Act, 1949, to which accused pleaded not guilty. On behalf of the prosecution 18 witnesses have been examined, most of whom are from the SRP and Police cadre and the panchas. The doctor who had examined the accused was also examined. The defence of the accused was of denial. According to his 313 statement he had quarrel with the complainant PSI Pawar in respect of Mess previously and, therefore, with a view to take revenge he had filed false report against the accused and the witnesses have deposed falsely at the instance of the complainant.

4. After considering the evidence on record, the learned Assistant Sessions Judge, Nashik, by his impugned judgment and order dated 30/11/1994 acquitted the accused of all the charges in view of the minor discrepancies in the evidence of the prosecution witnesses. The said order of acquittal is under challenge in this appeal filed by the State.

5. We have gone through the entire evidence on record and heard both sides at length and find it difficult to accept the reasoning of the trial court which is not justified by the evidence on record.

6. P.W. 10 is Police Constable Harun Shaikh, who is a person at whom the first shot was aimed by the accused. The said witness was on duty at Post No.7 between 9 a.m. to 12 noon on that day. After doing his duty he had gone to the Mess. He, however, did not take lunch but went outside the campus of Central Jail and took breakfast in a restaurant. At about 12.45 p.m. when he was proceeding towards Post No.7 from the side of Post No.1, he saw accused was on duty at the sentry post and was having rifle with him. He saw accused making unusual signs by raising his hands, but he did not pay attention. The accused then called out his name loudly. Therefore, he stopped and turned towards the accused. Accused aimed his rifle towards him and fired one round of bullet from his rifle when he was at a distance of about 20 to 25 ft. from the accused. The bullet missed him. Hearing the sound of shot, Constable Ahire P.W. 8, Complainant PSI Pawar P.W.1 and Head Constable Jagtap came out of the tent.

Constable Ahire called upon the accused to keep his rifle down. The accused then turned his rifle towards the direction of constables Ahire and Jagtap and, therefore, they jumped into a ditch for protection. In the meantime, constable Shaikh P.W. 10 ran towards the water tank for safety. Constable sitting in the mobile van took the mobile van towards the place of incident. One of the constables got down from the van and was going towards the accused but the accused aimed the rifle towards him and then fired from his rifle towards mobile van. After the accused had put down his rifle on the ground, constable Ahire apprehended the accused.

7. Similarly, P.W. 5 Head Constable Jagtap has deposed that he was on duty in Post No.1 on the date of the incident as In-charge Havaldar. Three constables Pawar, Ahire and accused were with him in the said post. The duty of the police constables was fixed by rotation every two hours. The accused was on duty between 6 a.m. to 8 p.m. and thereafter between 12 noon and 2 p.m. After hearing the first shot he had asked the accused not to fire from the rifle but the accused raised his rifle towards his direction. At that time one police constable was proceeding to

attend to his duties and the accused fired second round towards him. He along with constables Pawar and Ahire had taken a sitting position across the wall of the police-line building for safety. That time they heard third round of fire. Thereafter the accused had put his rifle down and he was apprehended by constable Ahire.

8. P.W. 6 ASI Rajput was at the relevant time in S.R. Group No.6, ‘D’ Company and was taking his lunch between 12.45 p.m. and 1 p.m. He was told by constable Phasale that there was sound of fire from post no.1. He, therefore, went towards the side of post no.1. He saw complainant Pawar and other constables Phasale and Chaudhari outside and the accused standing at a distance of about 25 ft. from post no.1 with rifle in his hand. He saw accused firing towards the side of police vehicle which was parked adjacent to the road side. He also saw accused firing one round towards the mobile van and some constables hiding in a ditch and then they called upon the accused to keep down the rifle on the ground and when accused kept the rifle on the ground, constable Ahire and others apprehended the accused. Thereafter the custody of rifle and cartridges was taken from the

possession of the accused.

9. P.W. 7 ASI Nivrutti Lahange was in the police van along with other constables at the relevant time. They heard the sound of firing from the side of post no.1. The van was, therefore, taken towards post no.1 and parked at a distance of 10 to 12 ft. from post no.1. ASI Pawar and Palde got down from the van. Seeing them, accused had raised his rifle and aimed on the chest of constable Palde but he could not fire as the bullet was probably entangled in the chamber. P.W. 8 is constable Ahire who was member of the same post no.1 along with accused. He had done his duty between 10 a.m. to 12 noon. Thereafter accused was on duty from 12 noon to 2 p.m. When he went inside the tent he had heard sound of fire at about 12.45 p.m. He along with constable Pawar and Head Constable Jagtap came out and saw accused from a distance of about 20 to 25 ft. At that time they saw P.W. 10 Shaikh running away towards the water tank. He had asked accused to keep down the rifle. When accused raised rifle towards them they jumped into a ditch. Subsequently he heard sound of fire twice. Thereafter he had apprehended accused when the rifle was put down by him. P.W. 9 is constable Palde who was in the

mobile van. After hearing the sound of fire he got down from the mobile van and tried to apprehend the accused but the accused raised rifle towards him and, therefore, he got frightened and took shelter across the barrack which was located near the said spot. This witness has deposed that at that time accused told him that he had seen one person running with a bag and, therefore, he fired at him. However, this was specifically denied by the accused in his 313 statement in answer to Question No.64. He found that accused was under intoxication.

10. P.W. 11 is constable Pundlik Bhange. At about 12.45 p.m. he was proceeding to attend to his duty after lunch. When he was passing from post no.1 towards main gate of Central Jail, he heard accused giving call to constable Shaikh. At that time he heard three sounds of fire. According to him another bullet was fired by the accused towards his direction but it missed him. He deposed that the accused had fired third time towards the mobile van. He also supports the version of constable Palde that when he got down from the mobile van, rifle was aimed at him by the accused and, therefore, he went back inside the patrolling vehicle. According to him also accused

reeked of wine and was in a state of intoxication.

11. P.W. 12 is ASI Rajaram Pawar. He was on duty in the Jail Mobile Van on the date of the incident along with constables Lahange, Pawar, Palde, Paralihar, Patole and driver Albert. When they were in front of the main gate of the Central Jail, they heard sound of bullet fire and, therefore, took the van towards that side. While they were proceeding towards the accused, he had fired from his rifle towards the van. They took the van near the accused and asked him to stop the firing but he raised the rifle towards them. Constable Palde got down from the van and asked the accused not to fire, but accused raised the rifle towards him and, therefore, he went back inside the van. Ultimately, when the accused kept down the rifle constable Ahire rushed towards the accused and apprehended him.

12. Thus, the evidence about the firing by accused is given by the police officers consisting of ASI and the Head Constables and the Constables. The trial court has, however, disbelieved their evidence on the ground of minor discrepancies, forgetting that the

attention of the witnesses was drawn because of the first shot fired from the rifle by the accused at P.W. 10 constable Shaikh and the witnesses were giving evidence after a period of more than one year. Constable Shaikh has deposed that accused was making gestures at him but he ignored them. However, when accused called him by taking his name he turned towards the accused. As the accused aimed rifle at him he stopped then and there. Accused fired from his rifle but missed the target. That is how constable Shaikh survived. Some constables were in the mobile van whose attention was drawn towards accused after hearing that shot. The other constables and Head Constables who were part of the post no.1 along with accused had come out of the tent after hearing the first shot fired by the accused. They called upon him not to fire but the accused turned his rifle towards constables Ahire and others. Constable Shaikh taking advantage of the accused turning towards Ahire and others ran away from that place and escaped. When the rifle was aimed towards Ahire and others, they also took shelter by jumping into a ditch. The police officers attached to Crime Branch, Nashik Road Police Station had taken the van towards the accused but accused had fired towards the side of the van when it was at some distance. Thereafter the van was taken

near the accused and P.C. Palde got down from the mobile van and proceeded towards accused asking him not to fire, but the accused aimed his rifle towards him and, therefore, he went back inside the mobile van. In the meantime the accused had fired from his gun three times.

13. The trial court had disbelieved the witnesses on the ground that while some witnesses stated that accused had fired towards the mobile van, the other witnesses stated that accused had fired towards Ahire and others and also P.C. - Palde. As per one witness accused had fired three times, while other witnesses speak about accused firing four times. Main question is not how many times the accused fired, three times or four times. The witnesses may commit mistake because they were coming from different directions. While some wintesses were in the mobile van, others had come out of the tent after hearing the shot and the person like complainant had come out of his office. One witness was taking lunch and had come out after he was told by others.

14. The fact that accused had fired first shot towards constable Shaikh can never be doubted. The attention of the other witnesses was drawn after he

had fired first shot. It was constable Shaikh P.W. 10 who had seen accused firing towards him after his name was called out by the accused. Naturally when the witness was called by his name by the accused he was bound to look at him. Constable Shaikh has been corroborated by constable Bhange P.W. 11. At the relevant time he was proceeding to attend his duty after taking lunch. He was proceeding from near the post no.1 towards main gate of the Central Jail. He heard accused giving a call to constable Shaikh and at that time he heard the sound of bullet. When he turned back he had seen accused firing another bullet towards him from a distance of about 30 to 40 ft. but the bullet did not hit him. P.W. 6 Rajput who was taking lunch at the relevant time could not hear the sound of fire from post no.1. He learnt about it from constable Phasale. Said witness was taking lunch at that time and for some reason had not heard the sound of fire. The police personnel from the mobile van were not connected with the SRP. They were outside the Jail and after hearing the first shot their attention was drawn towards the place i.e. post no.1 from where the sound of firing was heard. The van was, therefore, taken towards the side of the accused. They have deposed that accused had fired first shot towards their van and also aimed at constable Palde

who had got down from the mobile van. When the evidence was given by the witnesses after a log gap i.e. after about more than one year, the witnesses cannot be expected to give exact details about what transpired on the date of the incident.

15. The evidence of these witnesses is corroborated in essential particulars, by circumstances like finding of three empty cartridges from the place where accused was standing. He was having two live cartridges with him while on duty along with rifle which was seized from him after he was apprehended on the spot and taken to the police station. Those cartridges along with rifle were sent to Ballistic Expert. One rifle, 3 empty cartridges and two live cartridges were seized under panchanama Exh. 23 which was proved by panch Rathod P.W. 4. The clothes of the accused were also seized under panchanama Exh. 24. Other live cartridges which were allotted to the accused were seized under panchanama Exh.25. Those cartridges were sent for examination by the Ballistic Expert. Exh. 51 is the report dated 16/8/1993 received from the Ballistic Expert. As per the said report rifle was in working condition and residue of fired ammunition - nitrite was detected in

the barrel washings of the said rifle which shows that the rifle was used for firing prior to its receipt in the Laboratory. Two live cartridges were test fired from the said rifle. The empty cartridges Exhs.2A and 2C which were recovered from the accused were reported to have been fired from the said rifle. There is another Ballistic Expert report Exh. 52 dated 16/8/1993 according to which two randomly selected cartridges were successfully test fired from the said rifle out of the five live cartridges like the empty ones which were sent to the Ballistic Expert for test firing.

16. Prosecution has also led the evidence of Dr. Ramesh Desle, who had examined the accused on 13/7/1993 at about 3.35 p.m. The said doctor was Medical Officer attached to Civil Hospital, Nashik. On examination he found that accused was smelling of alcohol. His both pupils were dilated, but his gait was steady and speech was normal. He collected his blood sample and sent it to the office of C.A. As per C.A. report dated 21/9/93 Exhibit 38 the blood of the accused contained 0.092 per cent W/V ethyl 92 mgs. of alcohol. Thus the report of the C.A. corroborates

the evidence of the constables who had deposed that accused was smelling of alcohol.

17. The evidence of witnesses has been corroborated by the seizure of three empty cartridges from the accused which were from the same lot from which cartridges were allotted to the different constables on that day, including the accused. As per the report of the Ballistic Expert, the empty cartridges were fired from the rifle which was seized from the accused. The accused was also found to have consumed alcohol and, therefore, it is likely that he must have lost balance of mind and started firing at other constables. Merely because the register was not produced by the prosecuting agency which mentions about the allotment of rifle and the cartridges to the constables, including accused, the case of the prosecution cannot be doubted. The accused was a police constable and in his 313 examination he has not denied the allotment of the cartridges and the rifle to him on the date of the incident. The main object and purpose of examination under Section 313 of Cr.P.C. is to afford an opportunity to the accused to explain his case. If the rifle and the empty cartridges as well as live cartridges seized from the

accused had not been allotted to the accused nothing prevented him from saying so in his 313 examination. That is, however, not the point on which the trial court has acquitted the accused. The trial court has made reference to the non production of register about the actual duty hours of the accused. No adverse inference can be drawn for non production of that register simply because the accused has said that he was at the relevant time in the Mess. This would mean that so many police officers who are from different cadres i.e. police on the mobile van who were not from SRP but were attached to police station Crime Branch had falsely tried to support the complainant against the accused. No reason is shown as to why several police officers would falsely implicate the accused by deposing that they heard firing of the shots and their attention was drawn towards the accused who subsequently had fired twice from his rifle to which they were eye witnesses. All these witnesses have deposed that accused was at the relevant time near his post no.1 carrying rifle and aiming the same towards different persons and the mobile van and firing from his rifle.

18. Three empty cartridges were found near the accused who had to be apprehended by constable Ahire P.W. 8 who was from his group, as deposed to by the said witness as well as by the other witnesses as by that time attention of all the witnesses was drawn towards the accused. There is no doubt that the accused was firing from his rifle as corroborated by the Ballistic Expert's report, panchanama of seizure of the rifle and empty cartridges from the accused and the fact that the accused was found to have consumed liquor. The minor discrepancies are naturally found in the evidence of witnesses who gave evidence after lapse of more than one year. These discrepancies cannot be used to hold that they are false witnesses. Even if there is evidence of one shot having been fired by the accused towards P.W. 10 or towards the van or any other police officer, the prosecution has proved its case against the accused. Since the accused had aimed at P.W. 10 constable Shaikh and others while firing three shots from his rifle there was intention or at least knowledge on the part of the accused that if the bullet had hit the target and caused the death of the person aimed at, he would be guilty of murder. The accused was guilty of offence of attempt to murder under first part of Section 307 of IPC which is punishable with imprisonment for a

term which may extend to 10 years and fine. From the knowledge that if the bullet had hit any person at whom accused had aimed while firing from his rifle he could have died, the offence under Section 307 of IPC is proved against the accused. The accused has also committed offence under Section 286 of IPC as his act of firing from his rifle aiming at some persons was so rash and negligent as to endanger human life or was likely to cause hurt or injury to any other person. As per the evidence of the witnesses, corroborated by the Medical Officer and supported by the C.A. report, the accused had consumed liquor and, therefore, he is liable to be convicted for offence under Section 66(1)(b) of the Bombay Prohibition Act. The defence of the accused is not believable. Merely because there was quarrel between the complainant and the accused previously with regard to the affairs of the Mess, it cannot be said that the false case was filed by the complainant and all the witnesses gave evidence against him falsely. When the evidence of the witnesses is corroborated by the finding of empty cartridges from the possession of the accused and the Ballistic Expert’s report, so also the evidence of consumption of liquor by the accused, it cannot be said that all these witnesses had falsely deposed against the accused at the instance of the

complainant. It is not the case of the accused that the said cartridges and the rifle were not allotted to him. The accused cannot get away by simply saying that the evidence of the witnesses is false without explaining the finding of empty cartridges from the place where he was standing as guard.

19. Though we are of the view that the order of acquittal is liable to be set aside and the accused is liable to be convicted, the defence advocate fervently appealed that accused having been in service right from the year 1974 i.e. now for a period of about 30 years, the accused may be released on probation instead of sentencing him as there is no complaint against him of such negligence on his part after the incident in question. On the basis of the instructions from the accused, she further states that this is the first offence and the accused was not involved in any other offence and he was not convicted for any other offence either earlier or subsequent to the incident in question.

20. The offence under Section 286 of IPC is punishable with six months' imprisonment. Similarly, maximum sentence provided under Section 66(1)(b) of

the Bombay Prohibition Act 1949 is imprisonment of six months for the first offence. So far as offence under Section 307 of IPC is concerned, no hurt having been caused, the offence is punishable upto maximum 10 years' imprisonment under the first part of Section 307 of IPC and, therefore, under Section 4 of the Probation of Offenders Act, 1958 the court can release such offender on probation of good conduct if he is found guilty of having committed offence not punishable with death or imprisonment for life. In our opinion, having regard to the circumstances of the case, the nature of the offence and the character of the accused, it is expedient to release the accused on probation who was involved for the first time in such offence and there is no adverse record against the accused brought before this court. The accused was in the service of SRP even after the present incident which took place in the year 1993. The accused was under suspension during the trial only and he has been continued in service after his acquittal by the trial court and there is no adverse report against him.

21. In the result, the order of acquittal recorded by the Assistant Sessions Judge, Nashik on 30/11/1994 in Sessions Case No. 184 of 1993 is quashed and set aside and respondent-accused is convicted for offences

under Sections 307 and 286 of IPC as well as for offence under Section 66(1)(b) of the Bombay Prohibition Act, 1949. However, instead of sentencing the respondent-accused, we direct the respondent-accused be released on probation of good conduct for a period of one year by entering into his personal bond to appear and receive sentence when called upon during the aforesaid period of one year.

. The bond for a period of one year shall be executed by the respondent-accused before the Trial Court within a period of four weeks from today.

. The appeal is allowed accordingly.

(S.S. Parkar, J.)

(Anoop V. Mohta,J.)